

AT



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,668	01/06/2000	GARY A. BANNON	HS-102-DIV	1978

7590 06/16/2004

Brenda Herschbach Jarrell  
 Choate, Hall & Stewart  
 Exchange place  
 53 State Street  
 Boston, MA 02109

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliance With 37 CFR 1.192(c)</b>	<b>Application No.</b> 09/478,668	<b>Applicant(s)</b> BANNON ET AL.	
	<b>Examiner</b> Phuong Huynh	<b>Art Unit</b> 1644	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 25 March 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

Continuation of 9. Other (including any explanation in support of the above items): Appellant's amended appeal brief includes statements in the Groupings of claims (page 4) that

(A) Claims 37-51, 53 and 65-71 as dependent from claim 37 that recite a modified protein allergen.

(B) Claims 60-62 and 65-71 as dependent from claim 60 that recite a modified food allergen.

(C) Claims 63-64 and 65-71 as dependent from claim 63 that recite a modified peanut allergen.

The claims stand or fall together for issues numbered (1)-(9) above, as indicated below:

(1) The claims of Group A stand or fall together. The claims of Groups B and C stand or fall together.

(2) The claims of Group A stand or fall together; the claims of Group B stand or fall together; and the claims of Group C stand or fall together.

However, the brief does not present arguments as to why claims of Group A in issue 1 stand or fall together not with claims in Group B and claims in Group C, why claims in Group B and C stand or fall together not with Group A in the enablement issue (issue 1). The brief also does not present arguments as to why claims of Group A in issue 2 (written description) stand or fall together not with claims in Group B and claims in Group C, why claims of Group B in issue 2 stand or fall together not with claims in Group A and claims in Group C, and why claims of Group C in issue 2 stand or fall together not with claims in Group A, and claims in Group B since peanut allergens are food allergen derived from protein or protein allergen.

Appellant's amended appeal brief further includes a statement that "the claims of Groups C and D stand or fall together" on page 5 in the Argument section of the brief.

However, the brief omits the claims of Grouping D on page 4 of the Brief. Further, it is not clear what is the issue on appeal for "Group D".



CHRISTINA CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600